

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 381 of 1997

in

COMPANY APPLICATION No 411 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? NO

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil
Judge?No

RAJASHREE POLYFIL LIMITED

Versus

Appearance:

MR SN SOPARKAR with MRS SWATI SOPARKAR for Petitioner
MR BHARAT T RAO for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 27/01/98

ORAL JUDGEMENT

This petition is filed by Rajashree Polyfil

Limited, a company incorporated under the provisions of the Companies Act, 1956.

2. This petition is filed by the petitioner in order to get approval and sanction of the amalgamation scheme entered into by the petitioner - transferor company and Century Enka Ltd.- transferee company. By the said amalgamation scheme, the petitioner before me Rajashree Polyfil Ltd. is to merge into Century Enka Ltd. Before filing the present petition, the petitioner had filed Company Application No.411 of 1997 in this court and this court by its order dated 16th September, 1997 allowed the application of the petitioner for convening the meetings of the members, secured and unsecured creditors of the company for the purpose of considering the proposed arrangement of amalgamation scheme in question. By the said order, separate meetings of the Equity Shareholders, Secured Creditors being Debentureholders, Secured Creditors other than Debentureholders and Unsecured Creditors of the company were to be convened on 6th November, 1997. As per the order passed in the said Company Application No.411 of 1997 on 16th September, 1997, the Chairman of the petitioner company had advertised the said meeting on 11th October, 1997 and the meetings were held on 6th November 1997. The Chairman has filed his detailed report, about the proceedings of the said meeting, on 13th November, 1997. As per his report, out of the members of the said company, 111 members were present in person and 280 members were present through proxies. It is further mentioned that a majority of 99.98% of the members was of the opinion that the said compromise and/or arrangement should be approved and agreed. The report of the Chairman further shows that the meetings of the debenture holders were attended by 13 debenture holders in person and 8 debenture holders through proxies. All of the 21 debenture holders had voted in favour of the scheme. The meeting of the secured creditors was attended by 4 secured creditors. Out of them, one secured creditor attended in person and three secured creditors through proxies. All the four secured creditors voted in favour of the said amalgamation scheme. The meeting of unsecured creditors was attended by 92 unsecured creditors in person and one through proxy. All the unsecured creditors present in person as well as through proxies voted in favour of the said scheme.

3. The necessary advertisements were issued after filing of the present petition. Similarly, Official Liquidator as well as Registrar of the Companies were also served with the notice of this petition. But none

has appeared before this court filing objection to the sanctioning of the said scheme. No doubt, the report of the Chairman of the petitioner - company does mention that he had received an application signed by 95 persons but, out of those 95 persons, only 51 persons were the members of the company. It is his claim that the said objections were not in the prescribed form and in the prescribed manner but without prejudice to the same he has also tried to explain the objections raised in the said application. It seems that there were two main objections by those 51 members of the company who are not holding even 1% of the share in the capital. The first objection is regarding ratio of the share as per the amalgamation scheme. A member of the transferee company is to get one share of the transferor company for his 25 shares of the tranferee company. It is the claim of the applicants and one Mr.Sanmukhlal R.Gohil that this ratio of the share is grossly inadequate. At the outset it must be stated that 99% of the shareholders have found the said ratio to be proper and correct and they have accepted the said ratio. The transferor company had sought opinion of three chartered accountants regarding the said ratio and all the three chartered accountants have consistently opined that the ratio is correct and proper. It is by now very well-settled that court cannot sit in appeal against exercise of the commercial wisdom by members of the company. Therefore, merely because a minority, and in this case a very very thin minority, is raising the claim that the ratio is not correct, such claim raised by a minority could not be a ground for not sanctioning the scheme in question. The next objection is as regards the voting in the meeting through proxies. It seems that the said objection is raised on account of ignorance of the order of the court passed on 16th September 1997 as well as the provisions of Section 176 of the Companies Act, 1956. In the order passed in Company Application No.411 of 1997 on 16th September, 1997, it has been ordered as under:

- "2 (h) That voting by proxy be permitted,
provided that a proxy in the prescribed form duly signed by the person entitled to attend and vote at the meeting, is filed with the company at its registered office at Rajashree Nagar not later than 48 hours before the meeting."

Thus, the above specific order of this court passed on 16th September, 1997 provided for voting through proxies. Section 176 also clearly permits voting through proxies. Therefore, in the circumstances, the second ground for

raising the objection also falls.

4. The Official Liquidator has filed his report along with the report of the Chartered Accountant appointed by him and in the said report it has been clearly mentioned that acts and transactions of the company i.e. transferee company were conducted within the objects mentioned in the Memorandum of Association of the company and the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interests. The Registrar of Companies has not also filed any objection on affidavit to the scheme in question. It was only mentioned in the letter of the Registrar of Companies that the objection of Mr. Sanmukhlal R.Gohil may be brought to the notice of the court. The said objections are considered by this court in the above para No.3. This court finds no substance in the same.

5. In addition to the above circumstances, there was a Company Petition filed by the transferor company in the High Court of Calcutta bearing Company Petition No.520 of 1997 and in that petition also, approval and sanction in the amalgamation scheme was sought. The said High Court by its order dated 13th January, 1998 has granted its approval and sanction to the amalgamation scheme in question.

6. Therefore, in view of the above discussion, I hold that the present petition will have to be allowed and the approval and sanction to the amalgamation scheme at Annexure-C to this petition will have to be granted. I, accordingly, allow this petition in terms of prayer A & B. The petitioner to pay Rs.2,500/- (rupees two thousand five hundred) as costs to the Standing Counsel of the Central Government.

7. Mr.Manish K.Kaji who presided over as the Chairman of the meetings as per the order passed in Company Application No.411 of 1997 be paid Rs.3,500/(rupees three thousand five hundred) for each meeting.

Thus, this petition stands disposed of as indicated above.

[KMG Thilake]

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